UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1993/SR.25
29 August 1994

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

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(a) Question of the human rights of persons subjected to any form of detention or imprisonment

(b) Question of human rights and states of emergency

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The meeting was called to order at 3.10 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL (agenda item 10) (continued) (E/CN.4/Sub.2/1993/19, 20, 21, 22, 23 and 24 and Add.1 and 2; E/CN.4/Sub.2/NGO/2, 9, 14 and 15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO/15)

1. The CHAIRMAN said that, in order to save time, it had been decided to set a time-limit for statements: 10 minutes for the experts, 10 minutes for representatives of non-governmental organizations and for government observers, if they referred to several agenda items, and 7 minutes, if they referred to just one item, and 4 minutes for statements equivalent to a right of reply.

2. Mr. ALFONSO MARTINEZ said that he had been able to see for himself the work carried out by the Working Group on Detention, having represented Mr. Despouy there in his absence. As for the death penalty with special reference to its imposition on persons of less than 18 years of age, which formed the subject of chapter III of the Working Group's report (E/CN.4/Sub.2/1993/22), he once again emphasized the need to make a distinction, in the lists of States that retained the death penalty such as that drawn up by Amnesty International, between those States that applied the penalty in every case and those that did not apply it to persons under 18 years of age or to the physically and mentally handicapped. As far as juvenile offenders were concerned, it was also absolutely essential, as the Working Group had rightly pointed out, to ensure that the principle of the separation of adults and young persons in prisons was observed. The Working Group had also considered the question of the privatization of prisons and had recommended that Mrs. Palley should carry out a special study of the topic (para. 45). Mrs. Palley had performed that task very well, for she had submitted to the Sub-Commission an initial working document (E/CN.4/Sub.2/1993/21) which, though supposed to be only an outline, in fact virtually exhausted most of the subject-matter. The document contained a number of recommendations that should induce the Sub-Commission to appoint a special rapporteur to examine the question in more detail on the basis of Mrs. Palley's study. It was suggested in paragraph 83, that a study should be made of the legality in international human rights law of privatization of prisons. However, it seemed obvious that it was legal for there was no question of such a measure being illegal under any of the existing rules. As for the means of ensuring compliance with any international standards that

might be drawn up in that connection, that was not, in his view, a task for the Working Group on Detention since special mechanisms already existed for the purpose. Mrs. Palley's outstanding work should, however, be noted.

3. In their report on the right to a fair trial (E/CN.4/Sub.2/1993/24), Mr. Treat and Mr. Chernichenko made some very important recommendations, particularly concerning a draft third optional protocol to the International Covenant on Civil and Political Rights to guarantee under all circumstances the right to a fair trial and the right to apply for habeas corpus or amparo and other similar procedures. There should be no derogation from those rights even during states of emergency. As the task of the two Special Rapporteurs covered a field which was both broad-ranging and complicated, to ask them to submit their final report in 1994 was not warranted, in his view, and they should be given an extension of one year if necessary. He fully agreed with the view, as expressed by the two Special Rapporteurs in paragraph 109 of their report, that the Working Group on Arbitrary Detention could not consider cases of unfair trials which were not accompanied by detention. In other words, the trial must have resulted in detention for the Working Group to be competent to deal with the matter.

Statements equivalent to a right of reply

4. Mr. TAKABUSHI (Observer for Japan) said that the criminal case referred to by the representative of the World Council of Churches dated back to the Second World War when the Law for Maintenance of Public Security had been in force. That Law had since been abolished and all the sentences handed down pursuant to it no longer had legal effect. Furthermore, the rights to freedom of thought and expression were fully guaranteed under the Japanese Constitution adopted in 1947. Also, under the existing legal system, a person could be held in pre-trial detention only by warrant of the court and those in detention were entitled to be assisted by legal counsel and to have an interview with counsel in private.

5. As to the allegations made by the International Movement Against All Forms of Discrimination and Racism, he wished to point out that, in the case to which it had referred, the accused had been tried in accordance with the normal procedure and had been found guilty by the District Court. The decision of that court had been upheld by the Court of Appeals and the Supreme Court, which had rejected the request for a retrial. It was apparent therefore that in that case, the investigation and trial had been carried out in an impartial and fair manner. The other points he had made regarding the statement by the World Council of Churches also applied to the allegations made by the International Movement Against All Forms of Discrimination and Racism.

6. Mr. SOKHONA (Observer for Mauritania) said it was regrettable that certain non-governmental organizations allowed persons whom they did not know to make unfounded allegations on their behalf concerning the situation in some countries and did not even make the effort to seek the opinion of the States concerned. For example, the statements made on behalf of the Movement against Racism and for Friendship among Peoples and Pax Christi International during the discussion on agenda item 10 bore no relation to the actual situation in Mauritania which was currently a democratic State and which had about

10 political parties as well as more than 50 independent newspapers and magazines and a large number of citizens' groups. There were currently no political prisoners in Mauritania and no citizen was being prosecuted on political grounds. The persons who had spoken on behalf of those two non-governmental organizations, presenting themselves as exiles, had been prosecuted or tried in accordance with normal procedure for having incited racial hatred, violence and civil war. The small group to which they belonged had carried out armed operations against peaceful citizens, and it was clear that, had its object not been to spread hatred and violence, it would not have cut itself off from the debate that was going on in complete freedom throughout the country. It sufficed to reread the Manifesto of the Oppressed Black Mauritanians published by that small group, to understand what its true objectives were. All those who were genuinely interested in Mauritania should find out more about the situation there. His Government was ready to provide all the necessary information to such people as well as to the non-governmental organizations which had been taken in by those who had deliberately decided to remain on the sideline when it came to the construction of their country. His delegation hoped that those non-governmental organizations would check the information they had on situations of concern to them before raising the matter in public.

7. Mr. JOINET thanked those who had spoken on his report on the independence and impartiality of the judiciary (E/CN.4/Sub.2/1993/25) for their comments and assured them that he would take due account of all their observations and criticisms.

8. Mr. GUISSE recalling that he and Mr. Joinet had been entrusted with the task of drawing up the list of States that applied the death penalty, said that the document was ready and could be consulted in the secretariat.

9. The CHAIRMAN said that the discussion on agenda items 10 and 11 was closed.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1993/2-9, 10 and Corr.1 and 2; E/CN.4/Sub.2/1992/NGO/1; A/CONF.157/23)

IMPLICATIONS OF HUMANITARIAN ACTIVITIES FOR THE ENJOYMENT OF HUMAN RIGHTS (agenda item 19) (continued)

10. Mr. PAK Dok Hun (Observer for the Democratic People's Republic of Korea) commended Mr. van Boven on his excellent report (E/CN.4/Sub.2/1993/8) which made a substantial contribution to the international efforts to find a proper solution to the issue of reparation for the victims of gross violations of human rights. His delegation appreciated in particular the attention paid by the Special Rapporteur to the question of women forced to engage in prostitution in wartime. It also endorsed the principle, referred to in the report, that no statutory limitations should apply to crimes against humanity, even if such crimes did not constitute a violation of the national law of the country in which they had been committed. In that connection, it wished to draw the Sub-Commission's attention to the fact that Japan had always maintained that the United Nations was not an organ for the discussion of gross human rights violations committed in the past and that it should deal

only with current issues. That was a very dangerous allegation as, in a sense, it authorized a repetition of such acts. It was clear, however, that the exploitation and slavery into which 6 million Koreans had been forced by Japan, including 200,000 "comfort women" for the Japanese Army, were crimes against humanity to which no statutory limitation could apply and that Japan could not escape its responsibility in the matter.

11. In his delegation's view, the basic principles and forms of reparation, as proposed by the Special Rapporteur in chapter IX of his report, reflected the concerns of the victims and the States concerned. The necessary conditions for avoiding a repetition of the violations committed were also clearly set forth in paragraph 11 of the report. Obviously, reparation should be of a general and comprehensive nature. Japan had committed human rights violations not only in the Korean peninsula but also in all the regions through which the imperial Army had passed, and tens of millions of Asians and Europeans, including 6 million Koreans who had been forcibly displaced, had been its victims. Japan had, however, always refused to admit its responsibility, and its lack of sincerity in its so-called efforts to investigate the question of "comfort women" was highly regrettable. The result of that investigation, which the Japanese delegation had presented to the Sub-Commission a few days earlier, merely distorted the facts with regard to the drafting of those women, their total number, their nationality, and the operation of "comfort stations". Furthermore, Japan had never mentioned the possibility of compensation for the victims. It was clear that it did not want to face up to its responsibility and repent of its past crimes. Mr. van Boven also established a link, in his report, between gross human rights violations and the question of impunity. Compensation of the victims of violations should always be accompanied by a search for the truth and punishment of the guilty. In the case of Germany, the trial of Nazi war criminals had been accompanied by compensation for the victims. Japan, however, had done nothing either to compensate the victims or to try and punish those responsible for their situation. Lastly, he supported the Special Rapporteur's recommendation that the United Nations should adopt a set of principles and guidelines to give effect to the right to reparation for the victims of gross violations of human rights.

12. Mr. WAREHAM (International Association against Torture (AICT)) said that his organization applauded Mr. van Boven's report (E/CN.4/Sub.2/1993/8) which set the legal and moral basis for compensation for victims of gross human rights violations. His study underlined several important points including the fact that the "victim" could be both individual and collective and that the State, first and foremost, was responsible for violations. He had also drawn up a list of practices that could be characterized as gross human rights violations and had taken as an example groups that were deserving of compensation such as indigenous peoples, survivors of Nazi concentration camps and victims of armed conflict and forced removals.

13. Africans in the United States took a very keen interest in all such matters as there was a direct cause-and-effect link between the trade in African slaves in which Europeans had engaged in the past and the current status of Africans throughout the world. In that connection, it was important to note the emphasis Mr. van Boven placed in his report on the obligation to make moral compensation for the harm suffered by the victims of the slave

trade and other early forms of slavery; that moral duty involved an assessment of the harm caused and the adoption of affirmative action to compensate for it. For Africans, moral compensation, though necessary, was certainly not enough and financial compensation, albeit difficult, was not impossible. In that regard, the proposal made by Mrs. Ksentini and Ms. Warzazi concerning the abolition of the debt of the States concerned as compensation for the harm caused to their citizens in the past was to be welcomed. After all, it was African slaves who had enabled the so-called "developed world" to become what it was, but the men and women who had been freed after the civil war in the United States had remained second-class citizens, prevented by invisible chains from developing and becoming whole human beings. Such progress as they had made was due solely to the relentless struggle of the 1950s and 1960s for freedom and their rights, which had led to the adoption of a few affirmative measures on their behalf. But racism stalked Africans all over the world and none of them had ever received compensation for the gross violations of human rights and fundamental freedoms they had suffered to fuel the advance of Western civilization. His organization therefore attached the utmost importance to the work undertaken by Mr. van Boven and suggested that his report should be circulated as widely as possible and transmitted to the Commission on Human Rights at its forthcoming session. It was to be hoped that the distribution of the report and its discussion in the Commission would show the role of racism in human rights violations when the implementation of the principle of compensation came to be analysed.

14. The humanitarian right of intervention, which was the subject of a new agenda item, was an idea that had come into being with the end of the cold war and the advent of an era of geo-political reality dominated by a single super-Power, whose tool of foreign policy the United Nations had become. Henceforth, the United States imposed its will throughout the world, by persuasion where possible, by coercion where necessary. One component of that country's policy was to make the rest of the world accept a certain idea of democracy, as a result of which United Nations peace-keeping operations had turned into war operations, and it subscribed to the thesis that (military) might was right. The humanitarian arguments put forward by the United States to justify its intervention in certain countries in fact concealed economic objectives. The only reason why it had intervened in Somalia was because, with the Sudan, it appeared at the top of the list of eight African nations that were prospective oil-producers. It was noteworthy, therefore, that the Sudan was currently the target of a campaign in the United States designed to portray it as a fundamentalist exporter of terrorism and thus a worthy candidate for the next intervention. The policy of humanitarian aid had become so perverted that the project to assist Somalia had even been criticized in an internal United Nations report. Finally, there was reason to question the newly-found humanitarian concern of a country which, for over 30 years, had subjected the people of Cuba to a severe economic blockade to force the Cuban masses to overthrow the socialist system because it was not favourable to United States interests.

15. Great care was therefore needed in the analysis and application of new principles such as the humanitarian right of intervention which, in a world where there was only one super-Power, ran the risk of becoming a tool used to destabilize and violate the sovereignty of countries that had determined to steer a different course. Furthermore, it had to be noted that the State

which upheld the humanitarian right of intervention was the same one that had still to fulfil its humanitarian duty to its 40 million citizens of African ancestry since it had never compensated them for the gross violations of their fundamental rights and freedoms which it had committed.

16. Mr. TIAN Jin said that the question of the recognition of gross and large-scale violations of human rights as an international crime, which had been introduced by Mr. Chernichenko, was a very interesting one. It was important to clarify the definitions involved. The question arose as to which violations, apart from those already specified in the relevant international instruments, should be included in the definition of "gross and large-scale violations" - armed aggression, foreign occupation, prolonged unilateral sanctions imposed on a country without the authorization of the United Nations Security Council, xenophobia, neo-nazism and violations which prevented the exercise of economic, social and cultural rights. Mr. Chernichenko also included in the list of international crimes murder, arbitrary execution, torture, enforced or involuntary disappearances, and arbitrary and prolonged detention. Those terms were somewhat vague. It was generally acknowledged that there was no point in attempting to draw up an exhaustive list of international crimes. That being so, he wondered whether a list of criteria or the elements of such crimes should be drawn up. At all events, a further study should be made of what was meant by gross violations of human rights and by international crimes and of how the two concepts were linked. If a specific definition was envisaged, a systematic study would have to be carried out taking into account all the relevant conventions, documents and deliberations. In that connection, the term "crime in international law" was, in his view, preferable to the term "international crime". Lastly, the question of the action or punishment that should follow the commission of such crimes must also be examined.

17. Mr. TEITELBAUM (American Association of Jurists) said that he was also speaking on behalf of the International Indian Treaty Council, the International League for the Rights and Liberation of Peoples, and the Movement against Racism and for Friendship among People. Humanitarian law and human rights were not two separate concepts: quite the contrary, they shared the common objective of ensuring respect for individuals and communities - a point of view that was incidentally confirmed in General Assembly resolution 2444/1968 and at the 1970 International Congress on Humanitarian Law.

18. Since 1981, however, a broader concept of humanitarian law had emerged in the context of what General Assembly resolution 36/136 termed the new international humanitarian order. By General Assembly resolution 42/121, which endorsed the interpretation of the new humanitarian order as adopted by the Independent Commission on International Humanitarian Issues, all States had been called upon to cooperate for the protection of human rights and fundamental freedoms and to work together to promote international cooperation in order to solve humanitarian problems of international concern. In 1987, the idea of a duty to interfere had emerged and had been widely publicized in the media. On the pretext that the international community had a duty to act to help the victims of natural disasters and emergency situations, international public opinion had been conditioned to accept the use of methods very similar to those used by the colonial Powers in the previous century.

Subsequently, there had been a move away from the idea of a duty to interfere towards the idea of a right to interfere, without any pause to consider the contradiction in terms that involved since, by definition, interference meant unwarranted intervention. The contradiction, however, was no more than apparent, since that was precisely what was at issue: intervention in complete disregard of international law and solely on the basis of the law of the strongest. That was not, in itself, a new phenomenon in international relations. What was new - and extremely serious - was that such acts of intervention were currently taking place in the name of the United Nations or with its endorsement. The most significant example in that regard was the case of Somalia. The media had prepared public opinion for the operation by showing terrible pictures of children dying of hunger in a country that was a victim and where anarchy had taken over. The same media had been careful not to explain how Somalia had reached that predicament. The country's economy had been based on trade between nomadic shepherds and small farmers, so that Somalia had been self-sufficient in food until the IMF and the World Bank had imposed reforms which had broken that fragile balance. The operation that had been unleashed in Somalia was mainly designed to protect strategic positions between the Middle East and the Indian Ocean and also to guarantee North American commercial oil interests. According to the experts, Somalia had huge reserves of oil of excellent quality.

19. The recent disputes between Italy, on the one hand, and the United Nations Secretariat and the United States, on the other, were indicative of the deep-seated crisis through which the United Nations system, which was responsible for world peace and security, was passing. In the view of his organization, the Italian Government had been right to call for the operation in Somalia to revert to its initial objectives, which were to restore peace between the parties and to relieve the suffering of the Somali people. It had also been right to ask to participate in the decisions, in accordance with Article 44 of the Charter of the United Nations. It was inconceivable that United Nations decisions in the matter of war and peace should in practice be monopolized by a single State whose past, moreover, bristled with acts of international aggression, in breach of international law, and gross violations of the rights of other peoples and of its own people.

20. In Angola, multi-party elections had taken place normally under United Nations auspices. The losers had started the civil war again but, in that case, there had been no question of intervention as the result of the elections had not been what those who coveted Angolan oil had wanted. Similarly, the Israeli operation in southern Lebanon, which had left 100 dead, 500,000 displaced persons and 10,000 houses destroyed, had not prompted the slightest reaction on the Security Council's part. That was what humanitarian intervention amounted to in practice, namely, the assertion of the interests of the major Powers over the rights of peoples.

21. The credibility of the United Nations was seriously compromised because the Security Council had acquired excessive powers. In order to redress that situation, the Council must stop misusing the powers conferred upon it by Article 24 of the Charter; in all circumstances United Nations organs, including the Security Council, must always faithfully observe the Charter, the Universal Declaration of Human Rights and all other international

instruments. An arbitrary separation between humanitarian law and human rights, with the latter being blithely violated in the name of the former, was not permissible. The United Nations should be democratized by abolishing the right of veto and increasing significantly the number of members of the Security Council. In that way, the principle of the sovereign equality of all the Members of the United Nations would be restored. His organization had long held the view that such a serious decision as that concerning the use of force should be adopted by a qualified majority of the General Assembly.

22. Mrs. DEGENER (Disabled Peoples' International) said that she was also speaking on behalf of the International Association of Rights and Humanity. The human rights community had not yet come to realize the importance of the AIDS question from the standpoint of human rights. Her organization therefore welcomed the fact that the Sub-Commission had decided to take up that important subject. The Special Rapporteur's observations (E/CN.4/Sub.2/1993/9) were relevant not only in the context of AIDS but also in the broader domain of the prevention of all forms of discrimination on the grounds of ill health. However, although the Special Rapporteur had come to the end of his mandate, AIDS-related discrimination had not ceased, and there was no doubt that, in future years, the Sub-Commission would have to consider the problem regularly under a number of its agenda items. For example, there had been alarming reports from Asia that a number of prostitutes found to be infected with HIV had disappeared and, according to rumours, had been deported and executed by a cyanide injection. Furthermore, in many countries, people with AIDS were reporting police harassment and arbitrary detention. Their freedom to travel was being restricted and some were being forcibly transferred to more remote areas. An ever-increasing number of people with AIDS, together with their partners and families, were suffering discrimination with regard to their rights to housing, education, work and health care and in their right to participate in the cultural life of society. In some countries, homosexuals, prostitutes and drug-users were being subjected to violence.

23. The human rights issues raised by the AIDS pandemic were enormous and must be addressed. The Sub-Commission had an important role to play in that regard particularly with respect to the prevention of discrimination. Having considered the matter, her organization had arrived at some interesting conclusions which could serve as a guide to the Sub-Commission in adopting a resolution at its current session. First of all, it should confirm that international human rights law prohibited discrimination on the grounds of state of health in view of the words "or other status" which appeared in the various provisions on non-discrimination. Secondly, all States should be urged to review their laws, policies and practices, particularly in the fields of public health, the administration of criminal matters, and access to housing, education, health care and other resources of society, with a view to repealing or amending any that might discriminate against, or could be applied in a discriminatory manner against HIV-infected people and people with AIDS. Thirdly, all States should be called upon to ensure that the right of all people, including HIV-infected people and people with AIDS, to be protected from discrimination was enacted in law. Accessible, speedy and affordable redress procedures should be introduced. Fourthly, States should introduce or

strengthen public education, to combat the ignorance and prejudice that gave rise to discrimination. Lastly, all sectors of society should be involved in the fight against discrimination.

24. Mrs. OZDEN-NEURY (Centre Europe-Tiers Monde) said that the right to freedom of expression and opinion should be more effectively protected. The Sub-Commission could, for instance, recommend that standards of protection should be developed and also that a working group should be set up with the power to request States to make a report following receipt of a complaint or notification. One of its main concerns should be to promote a more balanced dissemination of information, without interfering with freedom of expression, and to develop appropriate ways and means of strengthening communication facilities in the developing countries. As things stood, information was often unilateral and selective, basically because of the huge concentration of the press and publishing concerns. Finance, industry and loans were interlinked, and concentrated in the hands of the same few owners. The source of 8 out of 10 items of information distributed throughout the world was one of the 4 major press agencies, all Western and all based in the North.

25. During the negotiations on structural adjustment programmes, the underprivileged groups in the population had no say in the matter. Yet they were the ones who suffered the dramatic consequences of those programmes. That was a violation of the right to freedom of expression and opinion. Reference should be made, in that connection, to the picture of three concentric circles which Mr. Joinet and Mr. Türk had described in paragraph 5 of their final report (E/CN.4/Sub.2/1992/9): "The first circle would probably encompass such rights as freedom of thought, conscience and religion. Next would come freedom of assembly and freedom of association and the right of peaceful demonstration, followed by the right to take part in government. The immediate connection between these rights and the right to freedom of expression is obvious in all concrete situations. All other civil and political rights are normally indirectly connected with the right to freedom of expression. The same is true of economic, social and cultural rights and the right of peoples to self-determination".

26. Her organization fully supported the proposal made by Mr. Guissé the previous day that a new item entitled "The right to fundamental freedoms" should be added to the Sub-Commission's agenda, under which freedom of movement, expression and opinion would be considered.

27. Ms. de VLAMING (World University Service) said that the organization she represented and the NGO's Coalition Against Impunity (see E/CN.4/Sub.2/NGO/20) welcomed the progress report on the question of the impunity of perpetrators of human rights violations, prepared by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6). The authors of the report should, however, have analysed in more detail what impunity involved. In Latin America and the Caribbean, for instance, impunity meant that the members of the armed forces and security forces who committed atrocities were neither prosecuted nor punished.

28. Impunity could take three forms. It could be structural in which case the State introduced a set of institutional and legal structures and mechanisms with the purpose of protecting those who abused the power of the

State. Impunity could be strategic in which event measures were used by government officials to impede the investigation of human rights violations. The third dimension of impunity was of a psychological and political nature. It was the result of the terror created by the State in the population to preserve the status quo. The authors of the report also failed to point out, on the one hand, that there was a relation between impunity and the policy of widespread human rights violations carried out by some States and, on the other, that the national security doctrine was linked to the existence of State terror, so that impunity could be said to be an essential component of State terrorism.

29. In Latin America and the Caribbean, the army had handed over power to civilians usually in return for impunity for the human rights violations it had committed. That was true, for example, of Argentina, Chile, Guatemala, Haiti and Uruguay. Confident in its impunity, the army imagined that it could get away with new crimes once again.

30. The experts dealt in their report with the question of reconciliation. It could not be said too strongly that, if reconciliation meant that the victims of human rights violations were denied justice it was not acceptable. In societies that had just emerged from military repression or internal conflict, what was needed was a conciliation of interests in order to build new relations. Members of the armed forces and security forces who had committed serious human rights violations should benefit from an amnesty only under certain conditions. First of all, the right to know the truth must be fully respected. Secondly, such human rights violations as might be the subject of an amnesty must cease before the amnesty entered into effect; those who committed crimes against humanity could never benefit from an amnesty. Thirdly, an amnesty must not deprive the victims or their relatives of their right to justice. In other words, they must be able to bring legal actions against the perpetrators of violations. Lastly, an amnesty must not exempt the perpetrators of violations from the obligation to compensate the victims or their relatives. The NGO's Coalition Against Impunity encouraged Mr. Joinet and Mr. Guissé to continue their study and was ready to cooperate in it.

31. Mrs. GRAF (International League for the Rights and Liberation of Peoples) said that the report by Mr. Guissé and Mr. Joinet contributed to an understanding of the causes of impunity. The military system of justice was one of the main factors responsible for impunity, as stated by the Permanent People's Tribunal which had studied impunity for crimes against humanity in Latin America for three years. The Working Group on Enforced or Involuntary Disappearances had also reached the conclusion that military courts played a significant part in impunity.

32. The authors of the report should also consider the extent to which supranational bodies of a universal character, such as the Commission on Human Rights, encouraged impunity by acting in a selective manner and ignoring certain violations for geopolitical reasons that had nothing to do with the spirit of the human rights instruments.

33. The military system of justice was not only highly dependent on the executive power but also made no provision for the right to an effective

remedy, as set forth in the Universal Declaration of Human Rights and developed in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. In many countries, the victims of human rights violations and their relatives could not appear as civil litigants before the military courts to obtain compensation. The fact that the draft Declaration on the Independence of Justice confined the jurisdiction of military courts to military offences and that the declaration on the Protection of All Persons from Enforced Disappearances stipulated that military personnel who were allegedly responsible for disappearances could not be tried by special courts and, in particular, by military courts, was a significant step forward.

34. She asked the Sub-Commission to request Mr. Guissé and Mr. Joinet to examine very carefully the question of the impunity of members of the armed forces and security forces who committed human rights violations and of the role played by the military courts in that regard.

35. Mr. Ryong You PAK (International Association of Democratic Lawyers) said he was pleased to note that the issue of the gross violations of human rights committed by Japan, as well as the issue of compensation, had been raised in United Nations forums for the protection of human rights, thus providing a first step towards a resolution of those issues. He welcomed, in particular, certain measures recommended by the Working Group on Contemporary Forms of Slavery and also the final report prepared by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and the fundamental freedoms (E/CN.4/Sub.2/1993/8) which noted that slavery, slavery-like practices and forcible displacement of the population constituted gross violations for which there should be compensation. He endorsed one of Mr. van Boven's basic principles, namely, that compensation must not be merely pecuniary, and that regard must also be had to the ethical issues with a view to preventing a recurrence of the crime.

36. In his view, the Japanese Government had avoided its international responsibility; and the observer for Japan, in the statement he had made at the previous meeting, had offered lame excuses in an attempt to evade the truth. Although he had referred to the question of so-called comfort women, he had not once mentioned the forcible displacement of 6 million Koreans during the Second World War. The Japanese Government was, he thought, doing nothing to carry out a full investigation, to bring the perpetrators to justice or to compensate the victims, who included some 200,000 women forced into prostitution and 6 million people moved to war areas and forced to work for the Japanese war effort. There was one indisputable fact - the very advanced age of the surviving victims, both comfort women and displaced persons. The Japanese Government therefore had a moral and a legal responsibility to bring the perpetrators to justice and to compensate the victims and their families with a view to alleviating their suffering and to restoring their honour and dignity. Only in that way could the Japanese Government convince the international community of its sincerity.

37. He recommended that the Sub-Commission should take the appropriate steps to give effect to the principles and guidelines set forth in Mr. van Boven's final report.

38. Mrs. BATONS (Third World Movement against the Exploitation of Women) said that her organization had followed with great interest the work of Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8).

39. She wished to draw attention to the fate of the 200,000 so-called comfort women who had become the sexual slaves of imperial Japan during the Second World War. It was clear that, in the light of the principles laid down in Mr. van Boven's report, the victims of that sexual slavery had a right to reparation. Japanese national institutions did not, however, provide them with effective remedies. In December 1991, the Korean victims had in fact sued the Japanese Government before the Tokyo District Court. The Philippine victims had done likewise in the spring of 1993. But it could take some 20 years for their cases to reach the Supreme Court and the youngest victim was 63 years old. According to one senior Japanese conservative politician, about 142,000 comfort women had died during the Second World War. Only 30 per cent of them had survived. Most of them had since died and the total number of survivors was very small. The amount involved would therefore not be very great.

40. Quite apart from the financial considerations, there was a question of principle: there had been violations of international law which included war crimes, crimes against humanity, and enforced slavery. Given the complexity of the issues involved - for, in addition to the specific problem of sexual slavery, there was the enforced displacement of men and women of various nationalities and the enslavement of prisoners of war and civilians - the Diet could not be expected, in the view of her organization, to solve the matter swiftly; the United Nations should therefore provide some mechanism whereby the persons responsible could be punished and reparation made expeditiously to the known victims, as well as to all those who had died but could not be identified - an enormous problem but one that would, however, also have to be tackled.

41. Organized rape was not only sexual slavery but also torture. It was therefore important to take appropriate action. There were various possibilities. The Sub-Commission could recommend that an international tribunal be created to punish the perpetrators of such crimes and to demand reparation for the victims. The Japanese Government, for its part, could request the United Nations Secretary-General to set up an international arbitration tribunal to consider individual applications for compensation. Also, a special fund, financed by Japan, should be set up in an amount equivalent to the sum of US$ 38 billion so that the victims could receive proper compensation.

42. Mr. RODRIGUEZ-MEJIA (Andean Commission of Jurists) said that impunity was a phenomenon that afflicted all the countries in the Andean region and seriously undermined the principles of equality before the law. In particular, it enabled certain people to evade their responsibilities because they were soldiers, policemen or State officials. Yet the State had a duty to respect and guarantee human rights; if an official acting under its orders violated human rights, by an act or omission, the responsibility of the State was incurred.

43. Impunity could be legal, meaning that it was conferred under laws granting amnesty, pardon, or reprieves for those who committed serious human rights violations. There could also be de facto impunity, where the State refrained from carrying out an investigation, denied the facts, or protected the perpetrators, or even where the authorities and the courts did not take any action either out of fear or because they had been intimidated. Referral to the military courts was a classical example of de facto impunity. Cases in point were those of Luis Napoléon Torres, Angel María Torres and Huges Chaparro, leaders of the indigenous Arhuaca community, who had been abducted, tortured and killed by Colombian soldiers in November 1990. Even though the Attorney-General had determined their responsibility, they had been acquitted by the military court that had tried them. Impunity could also result from the use of any method or practice which prevented the State from respecting its obligations with respect to the rights of those who came within its jurisdiction. In support of that view, he quoted the decision of the Inter-American Court of Human Rights to the effect that any exercise of public authority which violated the rights recognized in the Inter-American Convention on Human Rights was unlawful.

44. The Colombian section of the Andean Commission of Jurists welcomed the report of Mr. Guissé and Mr. Joinet on the question of the impunity of perpetrators of human rights violations (E/CN.4/Sub.2/1993/6), which should have the support of the Sub-Commission. He had a few criticisms to make, however. In particular, the authors of the report had considered the possibility of extending the study to cover categories of violations that were not attributable to the State, although they had confined their study to violations committed by the State or its agents. In his view, however, it was not correct to speak of human rights violations if the State was not implicated, for it would then simply be a case of crimes that were punishable by the means prescribed by law. If the notion of human rights violations was extended to cover acts which, though criminal, were not committed by the agents of the State, the responsibility of the State would be mitigated and would become relative.

45. He also considered that the question of the military courts, which was one of the main factors in impunity, had not been examined in sufficient depth. Mr. Guissé and Mr. Joinet's report had not analysed the military court as an institution, although such an analysis should have a prominent place in the final report. In Colombia, for instance, it was certainly not the function of the military criminal courts to protect human rights, since the judge at first instance, being a soldier, was both judge and a party. While the task of the court was to try purely military cases, an unduly broad interpretation of its powers converted any act or omission which constituted a human rights violation into a military matter. Moreover, in Colombia, the military courts denied victims the right to appear at the trial, on the pretext that it was not provided for under the Procedural Code.

46. The report also seemed to assimilate two notions that were, however, distinct: the notion of special courts and that of states of emergency. In point of fact, the former could exist without the latter and both were factors in impunity. It was, perhaps, because of that confusion that the report did not examine the question of states of emergency, although it was closely related to the mechanisms of impunity considered.

47. The authors of the report considered that the idea of a permanent international criminal court was not really feasible and came out in favour of ad hoc courts. The arguments invoked against the creation of a permanent international criminal court, namely, that, even if such a court were established, States might refuse to recognize its jurisdiction, were of the same nature as those that had been invoked against the formulation of an optional protocol to the International Covenant on Civil and Political Rights, in which connection, however, the fears that had been voiced had not been realized. Lastly, he was very much opposed to the idea that there was absolute impunity and relative impunity: such a distinction was dangerous and would pave the way for other human rights violations.

48. Mr. PATTEN (National Aboriginal and Islander Legal Service Secretariat), having thanked Mrs. Ksentini for the references she had made in her report (E/CN.4/Sub.2/1993/7) to a number of indigenous issues, said that the notions indigenous societies had of environmental protection could not be separated from their rights to their lands and resources. For that reason, they had proposed that the Working Group on Indigenous Peoples should reflect that right in the draft declaration in that regard. For instance, the recent decision of the High Court of Australia in the Mabo case had recognized that certain limited property rights flowed from the relationship between aboriginal people and their lands. His organization supported the Special Rapporteur's conclusions on the relationship between the environment and development and also Principle No. 4 of the Rio Declaration which stated that, in order to achieve sustainable development, environmental protection must constitute an integral part of the development process and could not be considered in isolation from it.

49. In paragraph 136 (b) of her report, Mrs. Ksentini proposed that a meeting of experts be convened to work out ways in which the right to a satisfactory environment could be incorporated into the activities of human rights bodies. Those experts should include indigenous persons. Furthermore, the Working Group on the Right to Development should consider the links between sustainable development and the right to development in human rights terms. It would be advisable for the Centre for Human Rights to be represented in the work of the Commission on Sustainable Development, as Mrs. Ksentini had recommended. His organization also supported the proposal by Mrs. Ksentini in paragraph 139 of her report that a special rapporteur be appointed to examine the question of the enjoyment of human rights in relation to ecological factors. That special rapporteur should consider fundamental indigenous issues. The right of indigenous peoples to self-determination, and not just to certain property rights, likewise deserved recognition. They needed the political and legal power to make the necessary decisions in relation to their total environment. In Australia, unfortunately, vested commercial interests wanted the final say. If their power was not limited, the destruction of the environment would continue. That did not mean that the indigenous people were against the proper utilization of natural resources. They simply wanted such utilization to be subject to certain limits.

50. He regretted that the Vienna Declaration referred to "indigenous people" and not to "indigenous peoples". The indigenous peoples considered that such a term was discriminatory because it was tantamount to denying the collective rights of indigenous peoples and, in particular, the right to

self-determination. The indigenous peoples therefore suggested that the Sub-Commission should recommend to the General Assembly, through the Commission on Human Rights, that the provisions of the Vienna Declaration which related to them should be amended.

51. Mr. OZDEN (Centre Europe - Tiers Monde) said that he was pleased to note that the Sub-Commission had placed a new item on its agenda concerning the concept of humanitarian intervention. That concept called for a close definition, as it currently concealed too many highly political and domineering intentions. For example, on 29 March 1993, the Under-Secretary for State for African Affairs had declared before the United States Senate that the United States should ensure its access to the vast natural resources of Africa, a continent that held 78 per cent of the world's chromium reserves, 89 per cent of its platinum reserves and 59 per cent of its cobalt reserves. One might well ask, therefore, whether such humanitarian intervention as occurred in Africa or elsewhere, with the support of the United Nations or of the United States, did not also have a whiff of chromium, platinum or cobalt. Nobody was taken in for everybody knew that, behind humanitarian intervention, political intervention lay concealed. Humanitarian intervention could also serve as an alibi for not taking a clear stand at the political level, as attested to by the inter-ethnic war raging in the former Yugoslavia. Consequently, humanitarian intervention was, perhaps, no more than a delusion and another concept that made it possible to apply the double-standard policy which had been so dear to the United Nations for a number of years.

52. United Nations institutions were too cumbersome and too restrictive for States. That was why the international community tended to establish special structures whenever a new situation arose. The Geneva Conventions were being violated in the bloody conflict in the former Yugoslavia, so an ad hoc tribunal was created. He wondered whether it would not be possible to create a court with jurisdiction to try all breaches of the Geneva Conventions, as Professor Chemillier-Gendreau had proposed in the Monde diplomatique of July 1993. Like other mechanisms of collective security, the concept of humanitarian intervention was used first and foremost to serve the interests of a State or of delocalized global economic power. The upshot was either United Nations expeditions supported by the United States or United States expeditions supported by the United Nations. Consequently, instead of taking advantage of the end of the bipolar world to redistribute the roles in international bodies, the United States was allowed to make use of United Nations machinery for its own ends, as in Somalia, for instance.

53. The question was whether the concept of humanitarian intervention had a positive future. If so, the structure of the Security Council should be modified so as to ensure that that concept was applied within a specific legal framework and in accordance with criteria that would apply in all situations.

54. Ms. ADAMS (Sierra Club Legal Defence Fund, Inc.) congratulated Mrs. Ksentini on the quality of her report (E/CN.4/Sub.2/1993/7), which was a factor in the inclusion in the agenda of the question of the effective implementation of environmental human rights, such as the right to health and to adequate living conditions. Mrs. Ksentini rightly suggested the establishment of a follow-up mechanism, such as the appointment of a thematic rapporteur, to examine the relationship between human rights abuses and

environmental degradation. She also proposed that the various human rights bodies, the thematic rapporteurs and the working groups should pay special attention to the relationship between the environment and human rights, as the Working Group on Indigenous Populations had done, for example. She further proposed that a meeting of human rights experts should be convened to consider how human rights bodies could take environmental concerns into consideration.

55. It was gratifying to note that the Vienna Conference had recognized the need to meet equitably the developmental and environmental needs of present and future generations. She trusted that the Commission's new Working Group on the Right to Development would take full account of that principle. She was also pleased to note that the Vienna Declaration made explicit reference to the problem of illicit toxic dumping, which posed a serious threat to the right to life and to health. The Commission on Sustainable Development had, in fact, included the question of toxic chemicals and hazardous wastes in its agenda.

56. Lastly, she suggested that the Sub-Commission should give some thought to the formulation of a new instrument defining environmental rights.

57. Mr. CHABEN (Observer for Uruguay), making a statement equivalent to a right of reply, said he wished to point out, for the information of World University Service, a non-governmental organization which had spoken under agenda item 4, that Uruguay, a republican and democratic country, supported the activities of all responsible non-governmental organizations. The representative of World University Service had referred to Uruguay in misleading terms and, in particular, had overlooked one essential fact, namely, that a referendum had been held in which the sovereign people had made known its will. Such a casual attitude to the truth was highly regrettable; the credibility of the United Nations as a whole was undermined when such positions were taken up before United Nations bodies. His Government was ready, in a spirit of cooperation, to assist that non-governmental organization to obtain a more accurate knowledge of the facts about Uruguay.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued)

58. Mr. COHEN ORANTES (Observer for Guatemala), referring to his Government's objectives for the forthcoming 115 weeks, said that it first hoped to promote full respect for human rights. No public official was required to obey any orders that were contrary to that policy. The Government trusted that the groups over which it did not have influence would follow its example. A cease-fire had been proposed to the opposition groups and the Government was also trying to analyse the structural reasons for the conflict from an economic, social and cultural standpoint with a view to correcting them. The campaign against poverty was also one of its priorities and it hoped in particular to modify the terms of trade between town and country. It would also introduce changes in production in Guatemala since only through job creation and productive investment would it be possible to combat poverty.

59. His Government had adopted three measures. First of all, it had endeavoured to mobilize the international community with a view to preserving and restoring the heritage and dignity of the Maya peoples. It was very important to safeguard the multicultural wealth of the country and to provide the Maya peoples who lived in Guatemala with a decent life. In that connection, Guatemala had asked for the support of UNESCO with which it already had contacts of a technical nature. Secondly, his Government had embarked on closer relations with non-governmental organizations with a view to discussing all matters of interest to them in the human rights field. It invited all those which were interested to come to Guatemala for a discussion of such issues. A meeting on economic and social development, in the organization of which the United Nations would participate, was to be held in 1994 and all non-governmental organizations were invited to take part in it. Thirdly, his Government intended to tackle the problem of poverty throughout the Central American region. It had proposed that a fund should be set up to combat poverty in Central America since, together, the peoples of the region could aspire to a viable process of integration. His Government knew that the Sub-Commission was aware that those developments would take time, but he had no doubt that it was also aware that such a policy to promote human rights, peace, democracy and the campaign against poverty was of decisive importance.

60. Mr. SACHAR, introducing his progress report on the right to adequate housing (E/CN.4/Sub.2/1993/15), said he had attempted to spell out the obligations of the State with regard to the right to housing. Though not specifically provided for in the international instruments, that right was legitimately based on a number of those instruments. He referred in particular to the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. The legal obligations of States, and the various aspects of those obligations, were not however, always made clear. It was necessary, therefore, to follow not only the letter of the instruments in question but also their spirit. He quoted in particular article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights whereby States parties undertook to guarantee the full realization of the rights recognized in the Covenant to the maximum of their available resources. Paragraphs 47 et seq. of his report summed up the various obligations incumbent on the State to guarantee to everyone the rights that were recognized. The Committee on Economic, Social and Cultural Rights had also stressed the importance of the protection of vulnerable populations, even during times of difficulty. In his view, States could not put off the need to perform their obligations in that regard indefinitely. The instruments were important but their implementation even more so. In that connection, he quoted an article in the press on the right to housing and the discrimination suffered by immigrants in Austria. Immediately after the Vienna Conference on Human Rights, the Austrian Parliament had adopted a law under which any immigrant who did not have 10 square metres available to him could be deported. That was gross discrimination, since many Viennese did not have as much space.

61. He drew attention to paragraph 120 of his report which summed up the judicial practice in regard to housing on the basis of the work of the European committee of independent experts appointed to monitor the application of the 1961 European Social Charter. He also commended the non-governmental organizations on the quality of their work in that regard.

62. Lastly, he referred to the difficulties he had had in obtaining assistance from the Centre for Human Rights, adding that he was not certain that he would be able to complete his report by the following year.

The meeting rose at 6 p.m.